

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

THE ROCK PLACE II, INC.,

Plaintiff,

vs.

SANITARY AND IMPROVEMENT
DISTRICT NO. 596,

Defendant.

8:20-CV-304

**ORDER REGARDING DEFENDANT'S
NOTICE OF UNTIMELY APPEAL AND
MOTION FOR SUMMARY
AFFIRMANCE**

On October 8, 2024, United States Magistrate Judge Michael D. Nelson entered an Order overruling Plaintiff's Objection to Defendant's Amended Rule 30(b)(6) Deposition Notice for the reasons stated on the record during a telephone conference that day. [Filing 198](#). On October 22, 2024, Plaintiff filed a Statement of Objections to Magistrate Judge's Order. [Filing 203](#). On October 23, 2024, Defendant Sanitary and Improvement District No. 596 (SID 596) filed a Notice of Untimely Appeal and Motion for Summary Affirmance. [Filing 205](#). In that Notice and Motion, SID 596 asserts that Plaintiff's Statement of Objections is untimely pursuant to NECivR 72.2(a) because it was not filed within ten (10) days after being served with the Order. [Filing 205 at 1](#). Consequently, SID 596 prays for the following relief:

Defendant SID 596 moves this Court to summarily affirm the Order (Filing No. 198) or deem Plaintiff's appeal abandoned pursuant to Local Rule 72.2(a), thus relieving said Defendant of any obligation to file a brief opposing the appeal by November 1, 2024 ("within ten (10) days of being served with the statement of appeal" Local Rule 72.2(a)).

[Filing 205 at 1](#).

The premise of SID 596's Notice and Motion is faulty because it relies on a version of NECivR 72.2(a) that has not been in effect since December 1, 2009. Indeed, as Counsel on the pleadings may recall, even under the pre-2009 rule, the filing still would have been timely because the rules back then counted "business days" instead of calendar days. The current version of NECivR 72.2(a) effective December 1, 2023—which is available on the Court's website at <https://www.ned.uscourts.gov/attorney/local-rules>—states the following:

(a) Statement of Objections.

A party may object to a magistrate judge's order in a nondispositive matter or findings and recommendation in a dispositive matter by filing a "Statement of Objections to Magistrate Judge's Order" or "Objections to Magistrate Judge's Findings and Recommendations" within 14 days after being served with the order or findings and recommendations, unless the order or recommendation states a different time. The party must specify (1) the parts of the order or findings and recommendations to which the party objects and (2) the legal basis of the objections. The statement of objections should also indicate whether the objecting party relies on a previously or newly filed brief. Unless ordered otherwise, an opposing party may file an opposing brief within 14 days of being served with the statement of objections. This brief may refer to previously filed briefs. The objecting party may not file a reply brief without the court's leave.

NECivR 72.2(a) (effective December 1, 2023). Under the current version of the applicable local rule, Plaintiff's Statement of Objections was not untimely and SID 596 is not entitled to summary affirmance of Judge Nelson's Order, [Filing 198](#), or any other relief SID 596 seeks in its Notice and Motion. Accordingly,

IT IS ORDERED that SID 596's Notice of Untimely Appeal and Motion for Summary Affirmance, [Filing 205](#), is summarily denied. SID 596 may respond to Plaintiff's Statement of Objections, [Filing 203](#), within the time and in the manner provided under the current version of NECivR 72.2(a)

Dated this 24th day of October, 2024.

BY THE COURT:



Brian C. Buescher
United States District Judge